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ATTORNEY GENERAL

Office of the Attorney General
State of Texas

April 18, 1991

Ms. Mary Ann Courter
Assistant General Counsel
Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR91-202

Dear Ms. Courter:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 11457.

You indicate that a requestor seeks information about a state trooper formerly employed by the Department of Public Safety. You state that the subject of the request, Billy Lamb, retired from the department in 1975 and died in 1985. The requestor first seeks a photograph of the trooper.

Section 3(a)(19) of the Open Records Act excepts from disclosure "photographs that depict a peace officer." In Open Records Decision No. 536 (1989), this office said that section 3(a)(19) ceases to apply after the death of the officer depicted in the photograph. Consequently, a photograph of Officer Lamb is not excepted from disclosure and must be released.

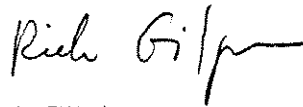
The requestor also seeks "some background information such as heart problems." You have enclosed "the only documents . . . in the personnel file which have anything to do with Billy Lamb's medical condition." One of these documents is a report prepared by a physician. This report is excepted from disclosure by section 3(a)(1) in conjunction with section 5.08 of the Medical Practice Act, article 4495b, V.T.C.S., which excepts all documents prepared or maintained by a physician. It has been held that article 4495b encompasses continuing protection; it does not lapse upon the death of the individual who is the subject of the report. Attorney General Opinion JM-229 (1984).

As to the other medical information in Officer Lamb's personnel file, some of it might well be excepted from disclosure under section 3(a)(1), as information made confidential by a common law right of privacy, if Officer Lamb were alive.

See, e.g., Open Records Decision Nos. 470, 455 (1987). It is well established, however, that a deceased person has no common law right of privacy; such right lapses upon the individual's death. Attorney General Opinion JM-229 (1984); Open Records Decision No. 432 (1985). Thus, you should withhold the document signed by the physician, but furnish to the requestor all other medical information about Officer Lamb which is contained in your file.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-202.

Yours very truly,



Rick Gilpin
Assistant Attorney General
Opinion Committee

RG/lb

Ref.: ID# 11457

Enclosure: Open Records Decision Nos. 536 (1989); 470, 455 (1987).
Attorney General Opinion JM-229 (1984).

cc: Gilbert M. Vela
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